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September 11, 2008

**VIA FACSIMILE ONLY**

Chairman Ross Johnson and  
Honorable Members of the  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814  
(Facsimile Numbers: (916) 327-2026 &  
(916) 322-6440)

Re: Agenda Item #9, September 11, 2008 Meeting – Repeal and Readoption  
of Regulation 18944.1 and Adoption of Regulation 18944.3 – Tickets, Fee  
Admissions and Items Received Through or From an Official's Agency

Dear Chairman Johnson and Honorable Commission Members:

The City of Indio did provide input at the Commission's Interested Persons' Meeting on July 10, 2008. Fortunately, the City's perusal of the information before the Commission at that time, and now again with respect to its consideration of this matter indicates that a number of California cities have shared well reasoned and compelling recommendations that the Commission disagree with its staff and deny publication of notice in this matter. Rather than reiterate any of the sound positions effectively advanced by the Cities of Anaheim, Mountain View, Pasadena and San Jose, Indio respectfully hopes that the Commission will view its modest contribution to the Commission's Prenotice Discussion today as a brief "reality check." Indio urges you to focus your attention on the Commission's mission and consider that the proposed regulations should not be on the Commission's agenda, let alone adopted.

California Government Code §§ 81001 and 81002, the full text of which is attached to this letter as a courtesy, remind us of the mindset and purpose of the People of this State in adopting the Political Reform Act of 1974. The City of Indio submits to the Commission that it should only be asking itself limited questions with respect to the tickets addressed by proposed regulation 18944.1. The first relevant inquiry is whether the tickets in question cause a ticket-receiving official to serve the needs of a ticket-providing party in a manner different from other citizens. The second relevant inquiry is whether the tickets in question prevent a ticket-receiving official from

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Chairman Ross Johnson and Honorable Members of the FPPC  
September 11, 2008  
Page 2

remaining free from bias caused by his/her financial interests, or the financial interests of a person who has supported him/her. The third and last relevant inquiry is whether an official receiving the tickets in question experiences a material affect to her assets and/or income such that when that ticket-receiving official is engaged in official action under circumstances reasonably arising from or relating to the ticket-providing entity/person and/or the tickets in question themselves, should be disqualified from such official action. While many other questions may be of scholarly and/or philosophical interest, unless the ticket-receiving official is a candidate for an elected office, or the ticket-providing entity/person is a lobbyist, these are the only three (3) questions worthy of the Commission's analysis when it acts under the Political Reform Act per §§ 81001 and 81002. The law and perspectives reflected in the submissions from other cities eloquently explain why all three (3) of these inquiries must be met with the Commission's negative response.

The Political Reform Act is neither a mandate nor a license providing for the Commission's service as the sole arbiter of what represents "good government," for all purposes and under all circumstances. Rather, the Act it is a finite rule of law, providing for the Commission's regulatory authority as insurance that its purposes are accomplished. There are many compliments to the Political Reform Act and the Commission's work in this vocation that insure public integrity. State, County and City prosecutors are responsible to interpret and enforce California's laws or the municipal codes of its cities. In addition to the criminal, civil and administrative process and sanctions available to various California government agencies entrusted with authority over the political realm, the final and perhaps most powerful check/balance on an official's actions is the ballot box. The Commission need not fear that if it fails to regulate in the manner now recommended by its staff that a vacuum will exist in this area. To illustrate the complimentary authority beyond the Commission's good work that can and should always be brought to bear with respect to the tickets in question, an example is instructive. If the concern driving the Commission's interest in the repeal and readoption of regulation 18944.1 relates to actual or potential corruption, there is a word for tickets being requested or given with the intent or effect of corruptly influencing an official. That word is "bribery," and the Commission does not enforce the law that prohibits the practice it describes.

The Commission's staff, in its memorandum dated August 29, 2008 pertaining to this agenda item, opines that the Commission has *"provided a safe harbor through which agencies can distribute tickets whether provided by any outside source, or from agency assets, or purchased with public monies, to its officials for their personal enjoyment with practically no accountability under the Act."* The undersigned respectfully submits that many presumptions underlie this admonition, e.g., that there is no public purpose served by an official's use of the tickets in question, that the purpose of an official's attendance at each event associated with said tickets is that official's "enjoyment" of said event, that the agency served by the official in question has no vested legal authority, independent of the Political Reform Act, to make the tickets in

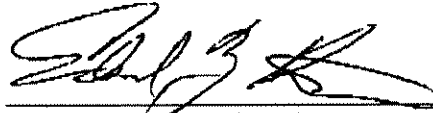
Chairman Ross Johnson and Honorable Members of the FPPC  
September 11, 2008  
Page 3

question available to the official, *etc.* These presumptions are significant not only in their own right, but because the lack of any real support for the Commission staff's admonition illuminates the true and unfortunately misguided nature of the Commission's enterprise in considering this agenda item. This correspondence and the letters submitted by the other interested cities point the Commission in the right direction. A regulation along the lines of that proposed by the City Attorneys' Division of the League of Cities "works." The draft regulation submitted by my colleague who serves Mountain View advances the Commission's valuable and effective pursuit of its crucial function. In contrast, the regulation proposed by the Commission's staff manifests an erroneous impulse to somewhat recklessly intrude into subject matter beyond the scope of the Political Reform Act, ignoring the "common sense" world of municipal life in which California city officials live.

As for the Commission's proposed Adoption of regulation 18944.3, the City of Indio simply notes its concurrence with the opinions of my esteemed colleagues referenced above.

Sincerely,

WOODRUFF, SPRADLIN & SMART  
A Professional Corporation



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EDWARD Z. KOTKIN  
City Attorney, City of Indio

enclosure

81001. The people find and declare as follows:

(a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;

(d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

(e) Lobbyists often make their contributions to incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;

(f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;

(g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand; and

(h) Previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities.

81002. The people enact this title to accomplish the following purposes:

(a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.

(b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

(d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.

(e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.

(f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.